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Held at the Palais des Nations, Geneva,
on Wednesday, 23 October 1996, at 10 a.m.

Chairman: Mr. AGUILAR URBINA

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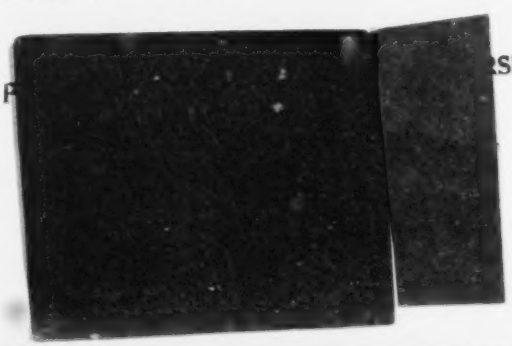

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The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Special report of the United Kingdom in respect of Hong Kong (HRI/CORE/1/Add.62; CCPR/C/117, CCPR/C/58/L/HKG/3)

1. At the invitation of the Chairman, Mr. Steel, Mr. Fung, Mr. Wong Kai-yi, Mr. Deane, Mr. Croft, Mr. Chan, Mrs. Rogan, Sir John Ramsden, Mrs. Foulds, Mr. Wells and Mr. Booth (United Kingdom of Great Britain and Northern Ireland and Territory of Hong Kong) took places at the Committee table.

2. The CHAIRMAN said that the fourth periodic report of the United Kingdom in respect of Hong Kong (CCPR/C/95/Add.5) had been considered at the fifty-fifth session and that the Committee had requested the Government to submit to it a brief special report focusing on the application of the Covenant after 1 July 1997. He thanked the delegation of the United Kingdom for having returned and invited it to make its introductory remarks before answering the questions in the list of issues (CCPR/C/58/L/HKG/3).

3. Mr. STEEL (United Kingdom) said that the dialogue with the Committee had always been constructive and fruitful and that he had no doubt that it would be so again. He would not immediately go into the detail of the issues of concern to the Committee, but would first describe the background to the question of Hong Kong. On 1 July 1997, Hong Kong would be returned to Chinese sovereignty in accordance with the Sino-British Joint Declaration on the Question of Hong Kong. The Government of the People's Republic of China had pledged that the territory would become a Special Administrative Region of China, preserving its own lifestyle and freedoms, having its own Chief Executive, executive authorities, legislature and judiciary operating its own legal system based on the common law and enjoying full monetary and fiscal autonomy. The Chief Executive would be chosen shortly, within one month at the most. If the person chosen was someone who commanded the respect of the people of Hong Kong, the uncertainty surrounding the transition would be partly dispelled.

4. However, the Chinese Government's plan to appoint a provisional legislature around the turn of the year to take the place of the Hong Kong Legislative Council on 1 July 1997 was disturbing. The current Legislative Council had been elected in 1995 in open and fair elections that had been fully consistent with the Joint Declaration and the Basic Law. It was the view of the British Government that the members of the Legislative Council should be allowed to serve their four-year term and that there could be no justification for any other course of action. The British Government had made it perfectly clear to the Chinese authorities that the United Kingdom was opposed to the establishment of a provisional legislature.

5. As far as the submission of reports on the implementation of the provisions of the Covenant in the Hong Kong Special Administrative Region was concerned, China had committed itself in the Joint Declaration to ensuring that the Covenant continued to be applied in the Region. The need to submit reports to the Human Rights Committee was the best guarantee of respect for

the provisions of the Covenant. However, all the difficulties would disappear if China acceded to the Covenant, as the United Kingdom had urged it to do. In any event and in the meantime, the United Kingdom hoped that the Chinese authorities would adopt a generous and flexible approach to the obligation to report on the situation in Hong Kong so as to remove a potential obstacle to the successful establishment of the Hong Kong Special Administrative Region.

6. Mr. FUNG (Solicitor-General of Hong Kong) said that the presence of a large number of Hong Kong officials as part of the United Kingdom delegation, together with members of the Legislative Council, non-governmental organization and the Hong Kong media, was proof of the great importance the people of Hong Kong attached to the protection of human rights afforded by the Covenant. Since the consideration of the part of the fourth periodic report relating to Hong Kong at the fifty-fifth session, the Government of the Territory had continued to pursue a wide range of initiatives to strengthen the protection of human rights and many of the measures announced in the fourth periodic report had become reality.

7. The Equal Opportunities Commission, which had been established in May 1996, had started operating in September. The new office of the Privacy Commissioner for Personal Data had been established in August. An act setting up an independent statutory Legal Aid Services Council had been promulgated, together with an act to enhance the powers of the Independent Police Complaints Council. The mandate of the Independent Commission against Corruption had been amended and a bill to increase the role of the Ombudsman had been introduced.

8. In the courts, the use of Chinese was becoming more widespread and steps were being taken to ensure that there would be no unreasonable delay in the hearing of cases brought under the Bill of Rights Ordinance and the new Sex Discrimination and Disability Discrimination Ordinances. On 14 October 1996 the application of the Convention on the Elimination of All Forms of Discrimination against Women had been extended to Hong Kong and the British and Chinese Governments had reached an agreement on the continued application of that Convention in the Special Administrative Region after 30 June 1997.

9. All those constructive new developments were part of the efforts being made by the Government of Hong Kong to help to ensure a smooth transition. The Government of Hong Kong was committed to cooperating with the Preparatory Committee and the Chief Executive who would be appointed before the end of the year; it also ensured that all the arrangements agreed upon were fully consistent with the Joint Declaration and the Basic Law and in the interests of the Territory, that the authority and credibility of the Hong Kong Government were not undermined and that civil servants were not subjected to conflicting loyalties.

10. In order for Hong Kong to continue to prosper as a Special Administrative Region under Chinese sovereignty and for the transfer to take place smoothly, agreements had been reached on the continued employment of civil servants, the transfer of defence responsibilities and the transitional budget. However, important work remained to be done, in particular to define ways of implementing the provisions of the Basic Law on the right of abode in Hong Kong after 30 June 1997.

11. Other important issues had to be decided, such as the future of the legislature, the implementation of the Bill of Rights Ordinance and the presence of a delegation from Hong Kong to submit reports to the Human Rights Committee. The current Legislative Council had been fairly and openly elected in a manner consistent with the Joint Declaration and the Basic Law and there was no need for a provisional legislature. The submission of periodic reports to the Committee after 30 June 1997 was also a source of great anxiety for the people of Hong Kong, who set great store by the procedure, which they regarded as a means of guaranteeing respect for human rights. The Bill of Rights Ordinance incorporated the provisions of the Covenant as applied to Hong Kong and there was no valid reason to alter it or to restore to an earlier form laws which had been amended to ensure that they were in line with it. In any event, decisions on those matters were for the Government of the Hong Kong Special Administrative Region to make, not for any other committee or body.

12. The CHAIRMAN thanked the British delegation for its introductory comments and invited it to answer the questions on the list of issues (CCPR/C/58/L/HKG/3), which read:

"(a) Committee's concluding observations: What arrangements have been established to ensure that the Committee's subjects of concern as identified in its concluding observations be addressed in an appropriate way and its suggestions and recommendations be implemented?

(b) Reporting obligations: Please specify which arrangements have been made to ensure that reporting obligations relating to Hong Kong under article 40 of the Covenant will actually be met in the future.

(c) Emergency regulations: Have steps been taken towards the issuing of regulations covering emergencies in conformity with article 4 of the Covenant?

(d) Continued operation of the Bill Of Rights Ordinance: What steps are being taken by the United Kingdom Government to ensure the continued operation of the Bill Of Rights Ordinance and the laws amended to comply with that law after 1 July 1997 (see paras. 36 to 40 of the report)?

(e) Continued operation of the Legislative Council: What steps are being taken by the United Kingdom Government to ensure that the Legislative Council continues to function after July 1997 in accordance with the Sino-British Joint Declaration on the Question of Hong Kong and the Basic Law on the Hong Kong Special Administrative Region of the People's Republic of China (see paras. 41 to 43 of the report)?

(f) Continued operation of the courts: What steps are being taken by the United Kingdom Government to ensure that the courts of Hong Kong continue to function after 1 July 1997 in accordance with the Joint Declaration and the Basic Law. In particular, how will the Constitution of the Final Court of Appeal be established in compliance with those instruments?"

13. Mr. STEEL (United Kingdom) said that the Joint Declaration and the Basic Law contained very detailed provisions on the implementation of the principle that there would be two systems for a single country. The Government of China had committed itself in section XIII, sentences 150 to 152, of the Joint Declaration to protecting the rights and freedoms of the inhabitants and of all other persons present in the territory of the Hong Kong Special Administrative Region. According to the provisions of the Joint Declaration, responsibility for following up on the Committee's recommendations and concerns currently lay with the Government of Hong Kong and would be the responsibility of the Government of the Special Administrative Region after 30 June 1997. Machinery had already been established in Hong Kong to respond specifically to the Committee's observations and concerns.

14. Mr. FUNG (Solicitor-General of Hong Kong) emphasized that the Committee's concerns were taken very seriously in Hong Kong. In November 1995, the concluding observations adopted by the Committee following its consideration of the fourth periodic report had been transmitted to the Executive Council, which was responsible for advising the Governor on any important policy matters. All the recommendations had been duly taken into account by the relevant Secretariats during the preparation of the special report and they had been debated in the Legislative Council. The same would be the case of the Committee's observations about the special report, which would naturally be brought to the attention of the Chief Executive who was shortly to be appointed.

15. Mr. STEEL, (United Kingdom), referring to question (b) of the list of issues, drew attention to sentence 156 of the Sino-British Joint Declaration, which stipulated that "The provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights as applied to Hong Kong shall remain in force." For the Government of the United Kingdom, China had unquestionably committed itself to submitting reports to the Human Rights Committee and to the Committee on Economic, Social and Cultural Rights. However, the United Kingdom Government believed that China continued to consider that it was not bound by obligations deriving from the Covenant, as it was not a party to it. If the Chinese authorities maintained that view, clearly the best solution would be for China to ratify the two Covenants, as the British Government urged them to do. Moreover, where the modalities were concerned, the British authorities had informed their Chinese counterparts, that at its fifty-fifth session, the Committee had expressed the hope that both sovereign Governments would try to find a solution before July 1997 on the question of the submission of reports and that the Committee would be flexible as to the modalities of submission of reports after the transfer. The British ministers had also informed their Chinese counterparts that, as a State party to the Covenant, the United Kingdom would see no problem in the Special Administrative Region of China itself submitting reports if that would make matters easier, and they had urgently requested the Chinese Government to cooperate in finding a solution. The latter had not yet replied, but the British Government would continue to urge it to cooperate.

16. Mr. FUNG (Solicitor-General of Hong Kong), replying to the question on the emergency regulations (para. (c)), said that the Government of Hong Kong saw no reason to enact new regulations on the state of emergency in the

absence of a specific emergency situation, whose circumstances would dictate the relevant regulations. In actual fact, both article 4 of the Covenant and part I, section 5, of the Bill of Rights Ordinance stated that measures taken under the emergency provisions should be adopted only "to the extent strictly required by the exigencies of the situation". What mattered was the capacity to enact legislation in an emergency and that capacity was guaranteed by the Emergency Regulations Ordinance. In the unlikely event of an emergency, new regulations adapted to the situation could be rapidly adopted under that Ordinance, subject, until July 1997, to the provisions of article 7, paragraph 5, of the Letters Patent and, subsequently, to article 39 of the Basic Law. Thus, the security of the population was guaranteed in strict compliance with the Bill of Rights Ordinance and the Covenant.

17. Mr. STEEL (United Kingdom), replying to question (d) on the continued operation of the Bill of Rights Ordinance, again drew attention to sentences 150 to 153 of the Sino-British Joint Declaration, which provided the basis for the Bill of Rights Ordinance, whose purpose was to give effect to the provisions of the Covenant, in conformity with article 39 of the Basic Law. Moreover, section II, sentence 53, of the Joint Declaration specifically provided that, after the establishment of the Special Administrative Region, the laws previously in force in Hong Kong would be maintained, save for any that contravened the Basic Law and subject to any amendment by the Hong Kong Special Administrative Region legislature. The United Kingdom Government was firmly convinced that the Bill of Rights Ordinance was fully in conformity with the Joint Declaration and could in no way contravene the Basic Law. Consequently, there was no reason not to adopt the Ordinance as a law of the Special Administrative Region on its establishment. The United Kingdom had repeatedly informed the Chinese Government of its interpretation.

18. Of course, the recommendation which was referred to in paragraph 36 of the special report (CCPR/C/117) and had been made by the Legal Affairs Sub-Group of the Preliminary Working Committee did give rise to a problem. As soon as it had realized that the problem existed, the United Kingdom Government had reaffirmed that there was no reason not to adopt the six ordinances as they stood, as they had already been amended. Moreover, responsibility for legislating would lie with the Legislative Council of the future Special Administrative Region. Consequently, any amendment would have to be made by that legislative authority and not by the Chinese Government. Clearly, the same was true of any amendments that might relate to the Bill of Rights Ordinance. However, the Basic Law was a law of the People's Republic of China. Nevertheless, as the relevant provisions of the Basic Law were based on the Joint Declaration, which was a binding international agreement designed as an implementing instrument, the United Kingdom was justified in monitoring its implementation after June 1997 and the Committee could rest assured that that was what it intended to do.

19. Referring to question (e) of the list of issues on the continued operation of the Legislative Council, he said that sentences 44, 46 and 49 of the Joint Declaration guaranteed an independent legislative authority for the Hong Kong Special Administrative Region whose representatives were to be freely elected by the Region's inhabitants. He nevertheless emphasized that the Joint Declaration made no specific provision for the current Legislative Council automatically to continue in operation after the transfer and that the

Chinese Government had unilaterally stated that the Council would cease to exist after 30 June 1997. In September 1995, however, during free and fair elections held in full conformity with the provisions of the Joint Declaration and the Basic Law, the people of Hong Kong had appointed 60 men and women to represent them and to serve a four-year term on the Legislative Council; it would clearly be regrettable and contrary to the interests of Hong Kong's population, as well as harmful to the region's stability and prosperity, for the 60 lawfully elected representatives to be denied the opportunity to serve their term of office. It was up to the Chinese Government, and not to the British authorities, to justify a decision whose application would sow doubt and confusion in the Hong Kong Special Administrative Region from its very first year of existence. Nevertheless, the British Ministers had constantly pressed their Chinese counterparts, at the highest level, to change their position and would continue to do everything in their power so that the Legislative Council, which had been elected in a fair and open election, could exercise its lawful mandate.

20. Mr. FUNG (Solicitor-General of Hong Kong), replying to the questions in paragraph (f) of the list of issues, said that the Joint Declaration and the Basic Law embodied specific guarantees relating to the continued operation and independence of Hong Kong's judiciary after 30 June 1997. In conformity with sentence 58 of the Joint Declaration and article 81 of the Basic Law, the Privy Council in London would be replaced by the Court of Final Appeal, which would be the supreme court in Hong Kong, and the judicial system as a whole would remain unchanged. In accordance with sentences 60 to 65 of the Joint Declaration and articles 85, 88 and 89 of the Basic Law, the courts and judges would continue to exercise judicial power independently and would benefit from the assistance and experience of judges in any common law courts throughout the world. In addition, a number of specific measures had already been taken further to improve the efficiency of the judicial system: sophisticated audiovisual and electronic equipment had been installed to improve the overall administration of justice and links had been set up with a variety of local and foreign computerized data bases. As Chinese was the mother tongue of more than 95 per cent of Hong Kong's population, the restrictions on the use of Chinese in the district courts had been completely removed in February 1996 and the same should happen in the case of the criminal courts in January 1997 and the Court of Final Appeal in July 1997.

21. With regard to the establishment of the Court of Final Appeal, which was to replace the Privy Council as the court of last resort after 1 July 1997, he said that, in June 1995, the United Kingdom and Chinese representatives on the Joint Liaison Group on the transfer of sovereignty had reached an agreement which was designed to satisfy the wishes of both parties and under which Hong Kong would have a Court of Final Appeal with powers similar to those of the Privy Council in London, subject to the provisions of the Basic Law. The aim was to avoid a legal vacuum during the transfer of sovereignty and to ensure the preservation of the rule of law after 30 June 1997. In order to implement the agreement, the Hong Kong Legislative Council had adopted an ordinance on 26 July 1995 which had established the Hong Kong Court of Final Appeal and according to which the Court should be composed of the Minister of Justice, three permanent judges and an invited judge depending on requirements and chosen from among the members of Hong Kong's judiciary or from a foreign common law court. Of the judges of the Court of Final Appeal, only the

Minister of Justice had to be Chinese and from Hong Kong. In practice, measures had already been taken and funds obtained from the Finance Committee of the Legislative Council to equip the necessary premises. Preliminary draft rules of procedure were being drawn up and it was also planned to consult the Privy Council in London to organize the proper transfer of any cases not yet decided by the Council to the Court of Final Appeal before 1 July 1997.

22. The CHAIRMAN invited the members of the Committee to put their additional questions to the United Kingdom delegation.

23. Mr. ANDO thanked the United Kingdom delegation for its replies to the questions on the 1 st of issues drawn up by the Committee. Although many questions required further clarification, particularly about efforts to improve the situation of women in Hong Kong, the use of Chinese in government departments and the protection of the family, the main question of concern to the Committee was how the obligations relating to the submission of reports to the Committee would be respected in the case of Hong Kong after the transfer of sovereignty on 1 July 1997. The Covenant had come into force for the United Kingdom, and thus for Hong Kong, in 1976 and, since then, the Committee had successively considered the initial report and periodic reports of the United Kingdom in respect of Hong Kong. However, as the transfer drew closer, the Committee had had to consider whether the fundamental rights of Hong Kong's population, as provided for in the Covenant, would still be properly protected, since, unlike the United Kingdom, the People's Republic of China was not a party to the Covenant, and that in itself was regrettable. However, it was clearly stated in sentence 156 of the Joint Declaration and in article 39 of the Basic Law that the provisions of the Covenant, as they applied to Hong Kong, would remain in force. The obligations set out in article 40 of the Covenant would therefore remain in force for Hong Kong and the Committee should receive periodic reports on the human rights situation in the new Region. In that respect, as the Committee had already said in its concluding observations of 3 November 1995, it was prepared to cooperate with the authority, whoever it might be, that would submit the subsequent reports and it was to be hoped that the relevant negotiations between the British and Chinese Governments would shortly conclude so that the Committee could continue its work, as required by the provisions of the Covenant.

24. Mr. KLEIN said that the situation with regard to the obligation to submit reports relating to Hong Kong was very special, sensitive and virtually unique. A number of legal principles and rules could be drawn on in order to analyse it correctly.

25. First of all, the United Kingdom was and remained fully responsible for respect for human rights in Hong Kong until 30 June 1997. Secondly, although China was not a party to the Covenant, it would be required to comply with the provisions of the Covenant as from that date, although only in respect of Hong Kong. Thirdly, China had voluntarily accepted the obligation that the provisions of the Covenant, as they applied to Hong Kong, in other words subject to the reservations made by the United Kingdom, would remain in force. That obligation derived from a binding international treaty, the Sino-British Joint Declaration and its annexes, which had been ratified by both parties and registered with the Secretariat of the United Nations in accordance with

Article 102 of the Charter. Fourthly, the provisions of the Covenant formed a juridical whole. The provisions of the Covenant on the monitoring of its implementation were an integral part of it and were no less important than the provisions on civil and political rights. There was nothing in the Joint Declaration or in its annexes to indicate that China had been prepared to accept the maintenance of the substantive provisions of the Covenant alone and to set aside those relating to the monitoring system. Fifthly, the commitment made by China was embodied in a bilateral treaty and it was therefore primarily the responsibility of the United Kingdom, the other party, to require compliance with it. That explained the important role the United Kingdom would have to play after 1 July 1997. For its part, the Human Rights Committee was a party neither to the Joint Declaration nor to the Covenant; it was an emanation of the Covenant. It had to operate in accordance with the machinery adopted by all the States which had made an international commitment to conform to that machinery, either as parties to the Covenant or by virtue of another form of approval, as in the case of China. Consequently, the Committee would be failing in its duties if it did not request China to continue to submit periodic reports in respect of Hong Kong.

26. The doctrine on which the system of human rights protection was based was that neither States nor their legal order were ends in themselves; their sole justification was that they benefited individuals. No State could allow itself to ignore that principle for long. One clear lesson from history was that respect for human rights strengthened a State rather than weakening it. It was therefore highly desirable that China should join the many States that were parties to the Covenant, and in the not too distant future. Respect for the provisions of the Covenant in Hong Kong would have very specific consequences, in particular for freedom of expression and the right of peaceful assembly, in the light of the exercise of the rights provided for in article 25, and for the independence of the judiciary.

27. Mr. EL SHAFEI said that the Committee's main concern was the maintenance of the obligation under the Covenant to submit reports on Hong Kong. In the Committee's view, States to which a territory was returned continued to be bound by the obligations entered into by the State on which the territory had formerly depended. In the case of Hong Kong, the parties to the Sino-British Joint Declaration had agreed that the provisions of the Covenant would all continue to apply. As the British delegation had said, the best solution in that case would be for the People's Republic of China to accede to the Covenant. Failing that, the Government of the Hong Kong Special Administrative Region could report to the Committee. A third option would be for the Government of the United Kingdom, which had "raised this issue with the Chinese Government at the highest levels" and would "continue to work for a satisfactory resolution", (special report, para. 7) to propose to the Chinese Government a new arrangement or mechanism whereby it would be possible to maintain the obligation to submit reports after 30 June 1997. In the meantime, the Committee should also be informed of the follow up to the consideration of the special report during the period from June 1996 to June 1997, when many issues of primary concern to the Committee would be discussed by the two parties.

28. Since the provisions of article 18 of the Basic Law did not seem to be in conformity with those of article 4 of the Covenant on states of emergency, he asked whether the legislation in force could be adapted before July 1997 in order to bring it into line with article 4.

29. The United Kingdom delegation had said that, as the Basic Law was based on an international treaty, the Sino-British Joint Declaration, it was in the interest of the United Kingdom Government to monitor the implementation of the treaty. He hoped that that would be the case. He referred to the existence of the Joint Liaison Group, which considered controversial issues in order to settle them through consultation (annex II to the Joint Declaration). As no provision of the bilateral treaty constituted by the Joint Declaration allowed one of the parties, the United Kingdom, to monitor the implementation of its provisions by the other party, China, it would be interesting for the Committee to know what procedures the Government of the United Kingdom could use to monitor the implementation of that bilateral treaty.

30. Mr. POCAR, commenting on the maintenance of the obligation to submit reports to the Committee, said that, under the Covenant, the State party that was currently bound by the obligation to submit reports and to ensure the full implementation of the Covenant in the territory of Hong Kong was the United Kingdom. It would bear that responsibility until July 1997 and even beyond, as it was unacceptable under international law for a State that transferred its sovereignty simply to renounce the obligations entered into under the Covenant or to denounce them in order to evade them. The obligations which the United Kingdom had accepted when it had extended the application of the Covenant to the territory of Hong Kong might to some extent be contrary to other earlier obligations it had assumed by agreeing to return the territory of Hong Kong to China. In any event, the United Kingdom was still bound by the obligation to guarantee the application of the Covenant to Hong Kong, or at least, to adopt such measures as were authorized by international law to ensure that it was applied.

31. In his view, it was precisely because the United Kingdom considered itself to be bound by that obligation that it had incorporated a clause in sentence 156 of the Sino-British Joint Declaration stating that the provisions of the International Covenant on Civil and Political Rights as applied to Hong Kong would continue to be in force. He noted with satisfaction that, according to the United Kingdom's interpretation, the term "provisions" covered both substantive and procedural provisions i.e. including those relating to the submission of reports. That clarification, which should have been added to sentence 156 of the Joint Declaration in order to remove any uncertainty, had unfortunately not been included. He took note of the efforts made by the British Government to have that broad interpretation accepted, although he thought that the issue should be resolved within the framework of the Joint Liaison Group, which was to continue operating until 1 January 2000 (annex II, para. 8, sentence 191, of the Joint Declaration). Subsequently, if China did not fulfil its obligations under the Joint Declaration on Hong Kong, the United Kingdom would be responsible for taking every necessary measure to ensure that the Declaration was applied and failure to do so would be a breach of its obligations under the Covenant.

32. He referred to the Committee's position on China, which had been explained in the statement made by the Chairperson on behalf of the Committee during the consideration of the part of the fourth periodic report of the United Kingdom relating to Hong Kong (CCPR/C/79/Add.57). In cases of the dismemberment of States parties to the Covenant, the Committee had taken the view that succession to human rights instruments went together with succession to the territory and that States continued to be bound by the obligations of the predecessor State under the Covenant. The statement also referred to the Sino-British Joint Declaration, but, as the Declaration was a bilateral treaty, he did not think that the Committee was in a position to monitor its implementation and could therefore base itself only on the argument of automatic succession to request China to continue to submit reports on Hong Kong.

33. He pointed out that the starting point for the doctrine of automatic succession in the case of the dismemberment of a State party had been the dismemberment of the former Yugoslavia and the former Soviet Union. The new States which had come into being after the disappearance of the former Yugoslavia and those that had demanded independence when the USSR had collapsed had not said that they were succeeding the predecessor State, but the Committee had requested them to submit reports and they had all agreed. It was true that Hong Kong was only part of a territory, but that was no reason not to apply the same principle to it. The Committee could be fairly flexible about the procedure for the submission of the next reports on the application of the Covenant to Hong Kong. The United Kingdom had considered several solutions, which could be examined by the Committee. As Hong Kong would be part of the territory of China and the latter was not a State party to the Covenant, the Special Administrative Region could itself report to the Committee. The Government would decide which authority would submit the report.

34. Mrs. MEDINA QUIROGA said that she was not satisfied with the replies to the Committee's questions. One year previously, there had been clear signs that China's interpretation of the Sino-British Joint Declaration differed from that of the United Kingdom and the Committee and that it was prejudicial to full respect for the human rights of Hong Kong's population. The Committee had therefore requested the United Kingdom to reconsider the matter with China. The Committee now knew that China was not prepared to assume the reporting obligation and that it had not replied to the proposal that it should adopt a different procedure.

35. The Committee had also been informed that the Legal Affairs Sub-Group of the Preliminary Working Committee set up by China had requested the Chinese Government to repeal a number of articles of the Bill of Rights Ordinance; it had been informed that the elected Legislative Council would be replaced by a provisional legislature and that the United Kingdom had a legitimate interest in monitoring the implementation of the Sino-British Joint Declaration. The United Kingdom would therefore immediately have to take steps to ensure, as a State party to the Covenant, that the human rights of Hong Kong's inhabitants were still protected after June 1997. It was commendable that a clause of the Joint Declaration should stipulate that the Covenant would remain in force in Hong Kong, but she wondered what the United Kingdom was doing, and what it intended to do, to ensure that both parties would comply with the Joint

Declaration and, in particular, to resolve the problem posed by the different interpretation of certain provisions. In her view, the United Kingdom was bound by the Covenant to use every legal and political means to ensure that Hong Kong's population continued to enjoy the rights guaranteed by the Covenant.

36. Mr. PRADO VALLEJO said that he had found the United Kingdom delegation's replies both clear and explicit. In his view, China's plan to replace the elected Legislative Council by a provisional legislature was tantamount to disregarding the will of Hong Kong's population and would be contrary to the spirit of the Covenant. In addition, the Joint Declaration signed by both parties stipulated that the Covenant would continue to apply to the territory; consequently, China had to submit to the Committee the periodic reports provided for by the Covenant, in accordance with article 40. The United Kingdom, which was also a party to the Joint Declaration, should demand that the Chinese Government apply the Declaration. In respect of human rights, moreover, it was a principle of international law that, whenever a population was protected by an international instrument, such protection could not be withdrawn by a simple decision of a Government. The Government of the United Kingdom therefore had to demand, through the appropriate mechanisms, that the protection afforded by the Covenant was maintained in Hong Kong and that sentence 156 of the Joint Declaration was respected. In his view, the United Kingdom Government should be firm and clear on that point.

37. Since article 40 of the Covenant still applied to China, the Committee had to decide on the best way of requiring that the obligation to submit periodic reports was complied with and, to that end, explore all means available internationally to demand compliance with an international agreement so that Hong Kong's population was not left unprotected.

38. Mr. MAVROMMATIS said that the presence of so many representatives of NGOs augured well for the outcome of the efforts being made by all to ensure that the Covenant continued to apply to Hong Kong after 30 June 1997. It was the Committee's duty to ensure, through dialogue with the representatives of the States parties concerned and by the other means available to it, that the Covenant continued to be effectively applied in what would become the Hong Kong Special Administrative Region. To that end, it had to determine how reports on the human rights situation in Hong Kong would continue to be submitted in accordance with article 40 of the Covenant. The statement made by the Chairperson of the Committee had defined the legal framework for the implementation of the Covenant after the change in sovereignty and other members of the Committee had explored that aspect at the current meeting. He emphasized that the Covenant was not an instrument that could be denounced and it contained no provision for that purpose. It was hard to see how a State, and still less a permanent member State of the Security Council, could "backpedal", as it were, and it was unlikely that China would do so.

39. Where the procedure for submitting reports to the Committee was concerned, it was of course the Committee's duty and that of its officers to continue to do everything in their power to help the authorities concerned to find a universally acceptable solution. If no agreement could be reached, it would be the Committee's responsibility to determine the appropriate procedure or measures to be taken.

40. He could nevertheless not help thinking that the United Kingdom could have done more to ensure that the Covenant continued to be implemented beyond the 30 June 1997 deadline. In any event, the United Kingdom authorities should continue their efforts and fulfil their international obligations under sentence 156 of the Sino-British Joint Declaration.

41. He would also have liked the Chinese authorities to be present at the current meeting; the Committee would thus have had an opportunity to assure them that they had nothing to fear from the application of the Covenant to Hong Kong after the transfer of sovereignty. In the case of Hong Kong, as in that of all States parties, the Committee's task was to try to identify, through a dialogue with the authorities, the areas in which it could help them improve the situation of human rights and fundamental freedoms. All the same, he was convinced that the best form of protection the Chinese Government could offer to all its citizens, including Hong Kong's population, would be accession to the Covenant. In any event, the Chinese authorities should rapidly take steps to assure Hong Kong's population and the international community that they would continue to apply the Covenant to the Hong Kong Special Administrative Region. No one would like to think that China, which was a permanent member of the Security Council, in which capacity it was obliged to defend the purposes and principles of the Charter of the United Nations, would be the first State to dismantle a system of human rights protection that had been operating for years. The Chinese authorities were not unaware of the repercussions such a decision would have for the future.

42. At all events, the Committee would continue its work and ensure that the obligation to submit reports on Hong Kong continued to be properly fulfilled. The obligation also applied for the period until 1 July 1997.

43. Lastly, he asked for information on the procedure agreed on by the United Kingdom and Chinese authorities for the submission of reports under the Convention on the Elimination of All Forms of Discrimination against Women.

44. Mr. BUERGENTHAL said that he also welcomed the presence of the representatives of so many NGOs. With regard to the application of the Covenant to Hong Kong after 30 June 1997, there was no doubt that the problems would be fully solved if China announced its intention to accept the obligation to submit reports or if it acceded to the Covenant. It would also be excellent news for the international community as a whole if the world's most populous country and the only permanent member of the United Nations Security Council that was not a member of the Covenant decided to accede to it.

45. However, if China failed to fulfil its reporting obligation, the United Kingdom authorities would continue to be responsible for doing so. They had obviously acted in good faith by incorporating their obligations under the Covenant into the text of the Joint Declaration and had tried to ensure that China assumed those obligations after June 1997, but if China did not, that would not relieve the United Kingdom authorities of their responsibility. He asked whether they had thought about how they would, if necessary, continue to submit reports under article 40 of the Covenant. He realized that his question was rather blunt, but the problem was important and called for a clear answer. It was to be hoped that, to the extent that the

United Kingdom would continue to ensure respect for the Joint Declaration, it would also inform the Committee of the outcome of its follow-up measures. The Committee would thus be able to rely on data provided by the United Kingdom authorities in carrying out its task of monitoring the application of the Covenant to Hong Kong.

46. Those comments did not relieve China of its obligations under the Covenant and the Joint Declaration. It was bound to guarantee respect for all the provisions of the Covenant in the territory of Hong Kong, including those relating to the submission of periodic reports. Whatever the Chinese authorities decided, the Committee still had an obligation to monitor developments in the human rights situation in Hong Kong, with the help of the United Kingdom authorities, if necessary.

47. Mrs. EVATT said she regretted that, in the case of Hong Kong, it had not been possible to dispel the Committee's doubts; worse still, additional problems seemed to have arisen following the consideration of the part of the United Kingdom's fourth periodic report relating to Hong Kong (CCPR/C/95/Add.5). She had listened with great interest to the United Kingdom delegation's explanation of the amendments made to the various ordinances to bring them into line with the Covenant and the Bill of Rights. In 1988, the Committee had already urgently requested the United Kingdom authorities to apply the provisions of the Covenant to Hong Kong through appropriate legislation. Moreover, the purpose of the Bill of Rights was to permit the Covenant to be applied in practice. In other words, the restoration of the previous wording of the ordinances and other laws which had been amended would lead to a restriction of certain rights that would be contrary to article 39 of the Basic Law. The repeal of the Bill of Rights would also restrict the rights set out in the Covenant and would thus not be in conformity with the provisions of the Basic Law and the Joint Declaration. In that connection, she asked how the United Kingdom authorities interpreted the words "as applied to Hong Kong" in sentence 156 of the Joint Declaration, which could be understood in different ways.

48. With regard to the obligation to submit periodic reports, she understood that, in future, the Covenant was to be applied to Hong Kong by means of the laws of the future Special Administrative Region. Both the Joint Declaration and the Basic Law stipulated that the Region's authorities would be primarily responsible for the application of the Covenant, with the exception of the obligations deriving from its article 40. In those circumstances, she asked whether article 40 was not to be interpreted as imposing an obligation not only on the United Kingdom as a State party to the Covenant, but also on China, in conformity with the Joint Declaration and by virtue of its status as the successor State to the United Kingdom. It could be said that, by signing the Joint Declaration, China had taken over the United Kingdom's responsibility for the submission of reports until 30 June 1997. Was that how the United Kingdom authorities saw the matter? Did they take the view that, if China refused to assume that obligation, they would continue to be responsible?

49. As far as the question of a provisional legislature was concerned, she had no doubt that the establishment of such an institution would undermine the

confidence of Hong Kong's population in the willingness of the Chinese authorities to fulfil their legal obligations. There would, moreover, be no legal basis for such a measure.

50. Mr. KRETZMER said that he welcomed the presence of a large number of representatives of Hong Kong NGOs, which were known for being particularly dynamic.

51. The continued application of the Covenant related to its provisions as a whole, including those involving the submission of periodic reports to the Committee. In that connection, he noted that, in paragraph 35 of the report (CCPR/C/117), the Governments of the United Kingdom and Hong Kong did not agree with the Committee's conclusions in respect of the electoral regime applicable to the Legislative Council. He personally continued to think that the electoral regime in force in Hong Kong had not been and still was not in conformity with the provisions of article 25 of the Covenant. In general, however, he welcomed the measures taken by the United Kingdom Government to give effect to the Committee's recommendations and, in particular, to implement those relating to investigations of complaints against the police. The Committee had nevertheless recommended that persons from outside the police should take part in such investigations, but that did not yet seem to be the case. He requested the United Kingdom delegation to clarify that point.

52. Like the other members of the Committee who had spoken before him, he believed that the United Kingdom bore a legal obligation to do everything possible to ensure that the Covenant would be applied in practice after the July 1997 deadline. As to the obligations of the Chinese Government in that regard, he particularly endorsed the views expressed by Mr. Klein and Mr. Ando. In the statement he had made following the consideration of the part of the fourth periodic report of the United Kingdom relating to Hong Kong (CCPR/C/95/Add.5), the Chairman had referred to the Committee's practice in respect of the continued application of the Covenant after the dismemberment of a State party, but he had also said that, in the case of Hong Kong, it was unnecessary for the Committee to rely solely on its jurisprudence, as the case of that territory was in many respects different from that of States such as the former USSR or the former Yugoslavia. It should nevertheless be emphasized that the Joint Declaration and the Basic Law provided that the international obligations the United Kingdom had assumed in respect of Hong Kong would remain in force after 30 June 1997. The Covenant was specifically referred to in that connection. There was thus no doubt that China recognized that the instrument would continue to apply to Hong Kong until that date. He therefore agreed with Mr. Pocar and Mr. Buergenthal that China would be bound by the obligations provided for in the Covenant, including those of article 40, after the transfer of sovereignty.

53. Mr. BHAGWATI said that, like other members of the Committee, he welcomed the presence of so many representatives of NGOs from Hong Kong. The territory was at a turning point in its history. It would shortly come under the sovereignty of a very great Power which had always been concerned about the wellbeing of its population, as clearly shown by the rapid economic changes under way in the country. He endorsed the views expressed by Mr. Pocar, Mr. Buergenthal and Mr. Klein and stressed that, as from 1997, China would be

bound by the obligation to submit reports to the Committee on the human rights situation in Hong Kong under article 40 of the Covenant. More generally, the Committee could only express satisfaction at the commitment the Chinese authorities had made under the Sino-British Joint Declaration to maintain in force the provisions of the Covenant as they applied to Hong Kong. China was thus demonstrating its willingness to fulfil its international obligations. There was no doubt that the rights and freedoms provided for in sentence 151 of the Joint Declaration would be respected by the authorities of the Special Administrative Region. If the submission of reports to the Committee gave rise to problems for the Chinese Government, it could entrust that task to the Hong Kong authorities. In any event, the Committee stressed the need to fulfil the obligation to submit periodic reports, which derived from the provisions of the Joint Declaration themselves.

54. The intention of the Chinese authorities to establish a provisional legislature in Hong Kong was in many respects disturbing. As Mrs. Evatt had pointed out, there was no legal basis for such a measure. Quite the contrary, both the Joint Declaration and the Basic Law expressly stipulated that the legislature of the Hong Kong Special Administrative Region was to be elected. He trusted that China would respect the commitments it had made in that respect. With the cooperation of the United Kingdom authorities, it should be possible to plan legislative elections shortly after the transfer of sovereignty. In any case, it would not be advisable for the Chinese authorities to set up an unelected provisional legislature. He had also understood that such an institution could be maintained for up to one year, and that was unacceptable. He asked the United Kingdom delegation to inform the Chinese authorities of his concern about that matter.

55. He was gratified that the current judicial system would remain in force after 30 June 1997, pursuant to the Joint Declaration and the Basic Law. There was, however, one perfectly understandable change: a final court of appeal would be established and would perform the functions now reserved for the Privy Council in London. Apart from that exception, the structure of the judiciary should stay the same and the common law would continue to apply, and that was commendable.

56. He was concerned by paragraphs 36 to 40 of the special report (CCPR/C/117) on the proposal by the Legal Affairs Sub-Group of the Preliminary Working Committee, which had been established by China, that some of the provisions of the Bill of Rights Ordinance should be amended on the grounds that they would give the ordinance more authority than all the other laws. He did not agree with that view. The purpose of the Bill of Rights Ordinance was to incorporate the provisions of the Covenant into domestic law, and that was clearly in conformity with article 39 of the Basic Law; it also provided for the repeal of existing laws that were incompatible with the latter. He could not see how the provisions of the Bill of Rights Ordinance could be regarded as incompatible with the Basic Law. In his view, there was nothing to justify their repeal. On that point as well, he would be grateful to the United Kingdom authorities for informing the Chinese authorities of his views.

57. Lastly, there was the problem of the measures that should be adopted if China refused to fulfil the obligation to submit reports to the Committee. Several possibilities had been referred to during the discussion, but, in any

event, the authorities of the Hong Kong Special Administrative Region had to recognize the human rights of the territory's population and ensure they were implemented. The Government of the United Kingdom should continue to inform the Committee of the human rights situation in Hong Kong. It could use the information provided by NGOs in order to do so. In any case, it was the responsibility of the Committee to ensure human rights were respected in Hong Kong, since the provisions of the Covenant applied to that territory.

58. The CHAIRMAN invited the members of the Committee to continue their consideration of the special report of the United Kingdom in respect of Hong Kong (CCPR/C/117) at a later meeting.

The meeting rose at 1.05 p.m.